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January 5, 2005

***By Electronic Delivery***

Federal Trade Commission  
Office of the Secretary  
Room H-159 (Annex O)  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580

Re: FACTA Credit Score Fee, Project No. R411004

Ladies and Gentlemen:

This comment letter is submitted on behalf of Fair Isaac Corporation in response to the advance notice of proposed rulemaking (“Advance Notice”) and request for public comment by the Federal Trade Commission (“FTC”), published in the Federal Register on November 8, 2004. In the context of the Fair Credit Reporting Act (“FCRA”), the FTC requests comment concerning how to determine a fair and reasonable fee that a consumer reporting agency (“CRA”) may charge for a credit score disclosure under section 609(f) of the FCRA. Fair Isaac appreciates the opportunity to comment on this important matter.

**THE ADVANCE NOTICE**

Section 609(f) of the FCRA requires a covered CRA<sup>1</sup> to provide consumers, upon request, with a credit score and certain other specified information. Specifically, section 609(f) requires a CRA to provide the following information to consumers: a credit score; the range of possible scores under the model used; the key factors that adversely affected the score; the date on which the score was created; the name of the entity that provided the credit score or credit file upon which the score was created; a statement that the information and credit scoring model may be different than that used by any particular lender; and, in certain instances, the name, address

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<sup>1</sup> Section 609(f)(4) states that a CRA is not compelled to disclose credit scores to consumers under section 609(f) if the CRA does not “distribute scores that are used in connection with residential real property loans” or does not “develop scores that assist credit providers in understanding the general credit behavior of a consumer and predicting the future credit behavior of the consumer.”

and website for contacting the score developer.<sup>2</sup> Section 609(f)(8) states that a CRA “may charge a fair and reasonable fee, as determined by the [FTC],” for this required credit score disclosure.

Pursuant to section 609(f)(8), the FTC issued the Advance Notice “invit[ing] comments from all interested parties on any aspect of a proposed determination of a fair and reasonable fee for score disclosure.”<sup>3</sup> The FTC identifies three general approaches for how a fair and reasonable fee for a credit score disclosure could be determined. Specifically, the FTC states that a fair and reasonable fee could be determined by: establishing a single, mandatory price; establishing a maximum price; or adopting a market-based approach that “looks to those charges produced by a competitive market.”<sup>4</sup>

### COMMENTS ON THE ADVANCE NOTICE

Fair Isaac applauds the FTC’s decision to issue the Advance Notice, before issuing a proposed rule, in order to obtain public comment concerning how to determine a fair and reasonable fee for a credit score disclosure under section 609(f) of the FCRA.

#### *“Educational Scores” v. Scores Used by Lenders in the Marketplace*

In the supplementary information accompanying the Advance Notice, the FTC indicates its belief that section 609(f) of the FCRA “requires only the disclosure of a ‘mortgage score’ or [an] ‘educational score.’”<sup>5</sup> Fair Isaac believes, however, that the disclosure of an “educational score” alone does not fully comply with section 609(f). More specifically, section 609(f) requires a CRA to provide a consumer with a “current credit score . . . or the most recent credit score . . . that was previously calculated by the [CRA] *for a purpose related to the extension of credit.*”<sup>6</sup> Moreover, the term “credit score” is defined in section 609(f) as “a numerical value or a categorization derived from a statistical tool or modeling system *used by a person who makes or arranges a loan* to predict the likelihood of certain credit behaviors.”<sup>7</sup> As a result, Fair Isaac believes that section 609(f) should be read to require the disclosure of a credit score that actually is provided to, and used by, lenders in the marketplace in connection with credit eligibility determinations.

Even if one assumes that a CRA may comply with section 609(f) merely by providing consumers “educational scores,” Fair Isaac believes that “educational scores” clearly are not as meaningful, nor as valuable, to consumers as credit scores that are regularly provided to, and actually used by, lenders in connection with credit eligibility determinations. The disclosure of credit scores that actually are used by lenders in the marketplace in connection with credit

<sup>2</sup> FCRA §§ 609(f)(1)(A)-(E), 609(f)(5)(A), 609(f)(7)(B).

<sup>3</sup> 69 Fed. Reg. 64,698, 64,699 (Nov. 8, 2004).

<sup>4</sup> 69 Fed. Reg. at 64,699-700.

<sup>5</sup> *Id.* at 64,698.

<sup>6</sup> FCRA § 609(f)(1)(A) (emphasis added).

<sup>7</sup> FCRA § 609(f)(2)(A)(i) (emphasis added).

eligibility determinations provides consumers with a more realistic view of their credit profiles and gives consumers a better understanding of how lenders in the marketplace view their risk levels. As an analogy, a high school student trying to decide where to apply to attend college gets little value knowing an entrance exam score that colleges do not consider for admissions decisions. Although knowing such a score may help the student understand where he or she stands with respect to other students, the real value is knowing the SAT or ACT score that the admissions officials will consider when making admissions decisions. Similarly, the ability to receive a credit score that a potential lender will use for credit underwriting purposes clearly is more meaningful, and provides more value, to consumers than does the receipt of an “educational score” that is unlikely to be used by any lender in connection with a credit eligibility determination.

*CRA's Should Be Required to Disclose Specified Information to Consumers*

Fair Isaac believes that a fee for a credit score disclosure required by section 609(f) can be fair and reasonable only when the CRA offering that credit score disclosure provides the consumer with meaningful information about the credit score being offered before the consumer agrees to pay for the credit score disclosure. Moreover, disclosure of such information prior to the purchase decision will make a market that sets the price for the 609(f) scores more efficient by allowing the consumer to find the most appropriate score for his or her needs and to compare one score to another when shopping for the most competitive price for a 609(f) score.

More specifically, the FTC should require a CRA to disclose the following information to a consumer before the consumer agrees to purchase a 609(f) credit score disclosure: (1) whether the score is used regularly in the marketplace by lenders in connection with credit eligibility determinations for mortgage loans; (2) the other types of credit eligibility determinations, e.g., auto loans or credit cards, the score is used for regularly in the marketplace by lenders; or (3) whether the score is merely an “educational score,” namely, that the score has been developed solely for educational purposes and is not used regularly by lenders in the marketplace in connection with credit eligibility determinations; together with (4) the name of the entity that will provide the credit score and the name, address and website for contacting the score developer<sup>8</sup>. The requirement for such a disclosure would educate consumers concerning important information they should look for when shopping for credit scores, and would better equip consumers to make informed decisions when obtaining credit score disclosures that are outside the scope of section 609(f).

It is critical that the FTC require that consumers receive sufficient and accurate information to ensure that the credit score disclosures provided under section 609(f) are truly

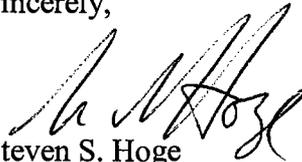
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<sup>8</sup> Although Section 609(f) requires disclosure of the name of the entity that will provide the credit score and, in certain instances, the name, address and website for contacting the score developer, when the score is provided, disclosure of this information to the consumer prior to purchase would inform the consumer about the score offered without imposing a burden on the CRA. There is no burden on the CRA because this information does not need to be customized for each consumer and does not eliminate the consumer’s motive to purchase the score if the consumer decides that the type of score offered for sale by the CRA in fact has value.

meaningful to consumers and that consumers have the information necessary to select from the credit scores offered under section 609(f). Such information will also assist the consumer when considering scores and related products offered in the unregulated market. Such a full disclosure approach is consistent with the FTC's mandate under section 5 of the Federal Trade Commission Act "to prevent persons [from engaging in] unfair or deceptive acts or practices."<sup>9</sup> In fact, the responsibility of the FTC to take necessary steps to avoid unfair practices is particularly important in the context of the centralized source, which the FTC is charged with overseeing under section 612(a) of the FCRA. As the FTC notes, the nationwide CRAs "may choose to market scores to consumers (and may choose to fulfill their statutory obligation under section 609(f)) through the centralized source."<sup>10</sup> As a result, it is particularly important in the context of the centralized source for the FTC to ensure an environment in which consumers are provided with sufficient information to enable them to select truly meaningful credit scores.

Fair Isaac appreciates the opportunity to comment on this important matter. If you have any questions concerning these comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me, at (612) 758-5424.

Sincerely,



Steven S. Hoge  
Scoring Market Unit Counsel

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<sup>9</sup> 15 U.S.C. § 45(a)(2).

<sup>10</sup> 69 Fed. Reg. at 64,701.